

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE 1ST DAY OF SEPTEMBER,
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 6593 of 2000

Between:

P.Sudhershnan Reddy S/o Shivarami Reddy
R/o Pamurapalli Giddalur Taluk,
Prakasham District.

..... PETITIONER

AND

- 1 The Directorate General Of Air Artillery(ADA-5), General Staff Branch
Army Head Quarters(DHQ), NEW DELHI-110001.
- 2 THE COMMANDING OFFICER , Technical Training Regiment
Head Quarters, Air Defence Artillery Centre, Nasik Road Camp-422102
Maharashtra.
- 3 The Senior Record officer for OIC Record,
Air Defence Artillery records, Nasik Road Camp-422102 Maharashtra.
- 4 The Government Of India Represented by Its Secretary,
Secretary, Ministry of Defence, New Delhi-110001

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or Writ under Article 226 of the Constitution of India, more particularly one in the nature of writ of Mandamus declaring the action of the second respondent in discharging me from service with effect from 23-10-1998 vide Lr.No.323803/TRR-A/ dated 26-10-1998 on medical grounds without any valid reasons as bad, arbitrary, illegal and against the principles of natural justice and consequently direct the respondents to reinstate me into service forthwith with continuity of service .

Counsel for the Petitioner:MR.C.DAMODHAR REDDY

Counsel for the Respondents: MR.B.NARAYANA REDDY,Addl.SC for C.G.

The Court made the following :

ORDER:

The petitioner was discharged from the service vide proceedings dated 26-10-1998 of the second respondent on medical ground with effect from 23-10-1998. The petitioner was selected through Branch Recruitment Office ,Guntur on 12-11-1996 as a Recruit in Army with No.15764391W. After recruitment, Recruit has to undergo two parts of training, 1) Basic Military training. This part of the training is carried out in the training regiments other than the regiment commanded by second respondent. The petitioner had undergone this part of the training under 3 Administration and Training Regiment .2) Advance or Technical Training. This part of the training is carried out in Technical Training Regiment commanded by second respondent. The petitioner was sent to the basic training from 29-11-1996 to 15-6-1997. He was also sent for the advance training or technical training from 16-6-1997 to 2-1-1998 under I training Regiment and from 3-1-1998 to 28-10-1998 under technical training regiment. While he was undergoing basic training he was granted a leave from 17-5-1997 to 13-6-1997.

The learned counsel appearing for the petitioner submits that the petitioner has already completed the advance training but the second respondent issued the discharge letter dated 26-10-1998 without assigning any reasons and without giving any opportunity and explaining the reasons for his discharge.

It is stated that aggrieved by the discharge order, the petitioner filed a complaint and in response to the said complaint the second respondent passed an order in proceedings No. AD/15764391w/Disch (R&D)/01/UD/99/39/NE dated 5-4-2000, in which it is disclosed that the service documents of the petitioner have been scrutinized and he was discharged from the service as he is unlikely to become an efficient soldier since he had missed the basic training beyond acceptable period due to his hospitalization. Therefore, his account finally has been settled.

Questioning the discharge order, the petitioner filed this writ petition.

It is the case of the respondents that the petitioner has not completed the advance training and he has not passed even single mandatory written or practical

test during the advance training to enable him to qualify as having completed his advance training. The petitioner had missed the training on account of reporting sick, hospital admissions, and sick leave for a period of 271 days. In fact, the discharge certificate issued by the Area Defence and Artillery records reflected the actual nature of discharge, which is described therein after a due scrutiny.

The learned counsel appearing for the respondents also placed the relevant record and a perusal of the proceedings of the Board of Officers discloses that the petitioner on different spells was reporting sick and he was absent for 271 days from 7th February, 1997 to 9th October, 1998. The report also stated that the Recruittee has not appeared/passed any test during advance training. Therefore, under the authority of table IV annexed to Army Rule 13(3) of Army Head Quarters letter No.A/20314/MT-3 dated 28-2-1986 sanction was accorded to discharge the petitioner with effect from 23rd October, 1998, as he has missed the training for 271 days and is unlikely to become an efficient soldier.

It is further stated that the petitioner could not complete the basic training and advance training, and has not passed any single mandatory written or practical test during the advance training, and did not qualify and he is not an ex-serviceman, and therefore, the petitioner cannot be treated as ex-serviceman as per the instructions issued by the Government of India, Ministry of Defence, in letter No.4008/OCR/SFR/Re-9 dated 17-11-1993. Therefore, it is stated that the petitioner fully aware of all the facts and therefore, it cannot be said that he was not given any reasonable opportunity for being heard.

Admittedly the petitioner reported sick during the training period. As far as felling sick is concerned, it is not in dispute and it is the case of the petitioner that as he fell sick, he could not complete the training. The only grievance of the petitioner is that no notice was given before the discharge of his services. The service of the petitioner has not been regularized and he could not complete training also. Merely because he was discharged on the medical ground, it cannot be said that a stigma is cast on the petitioner. However, I am of the view that the respondent could have issued a notice to the petitioner and discharged him for the aforesaid reasons, as, there are sufficient reasons, the petitioner was discharged and he is out of service, he is not entitled for reinstatement.

Accordingly without setting aside the discharge order, the respondents are directed

to issue a notice to the petitioner by giving him reasonable opportunity to make a representation and pass appropriate orders in accordance with law.

The petitioner is not entitled for any reinstatement or any service benefits from the date of his discharge till final order that is going to be passed by the respondents after giving reasonable opportunity to the petitioner.

The W.P. is accordingly disposed of. No order as to costs.

----- V.ESWARAIAH, J

01-09-2004

Stp

Sd/-

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To:

- 1 The Directorate General Of Air Artillery(ADA-5), General Staff Branch
Army Head Quarters(DHQ), NEW DELH-110001.
- 2 THE COMMANDING OFFICER , Technical Training Regiment
Head Quarters, Air Defence Artillery Centre, Nasik Road Camp-422102
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- 4 The Secretary, The Government Of India , Ministry of Defence, New Delhi-
110001.

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